LUCKY II MINES

IBLA 86-231 Decided April 14, 1988

Appeal from a decision of the Idaho State Office, Bureau of Land Management, rejecting a hard-rock minerals preference right lease application. I-18708.

Affirmed as modified.

1. Mineral Lands: Prospecting Permits--Mineral Leasing Act for Acquired Lands: Generally--Mineral Leasing Act for Acquired Lands: Consent of Agency

   The requirement in a hard-rock prospecting permit that the permittee provide notice to and receive approval from the Forest Service before commencing any exploration activity is separate from and in addition to the provision in the permit requiring submittal of an exploration plan to BLM before commencing such activ- ities. Compliance with the Forest Service reporting provision does not constitute compliance with the BLM provisions.

2. Applications and Entries: Generally--Mineral Lands: Prospecting Permits--Mineral Leasing Act for Acquired Lands: Generally

   The rights of a holder of a prospecting permit are conditioned upon compliance with the requirements imposed by regulation and the permit itself. BLM may properly reject a preference right lease application filed pursuant to the prospecting permit on the basis that the exploration information submitted to support a discovery of a valuable mineral was not obtained under an approved exploration plan as required by regulation and permit provisions.

APPEARANCES: Sam Presnell and Joe Swisher, Cottonwood, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Lucky II Mines 1/ has appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated December 4, 1985, rejecting its preference right lease application I-18708.

BLM had issued hard-rock prospecting permit I-18708 to appellant, effective May 1, 1983, for 80 acres situated in the S\ SW^ sec. 26, T. 36 N., R. 3 E., Boise Meridian, in the Clearwater National Forest. The permit was issued for a period of 2 years pursuant to the Mineral Leasing Act for Acquired Lands of 1947, 30 U.S.C. || 351-359 (1982). 2/ Because the land described in the permit was under the surface management jurisdiction of the U.S. Forest Service, one of the preconditions to issuance of the lease was agreement by the permittee to certain stipulations regarding the use and exploration of the land required by the Forest Service. Appellant agreed to these stipulations and also signed other stipulations attached to the permit by BLM.

On April 29, 1985, appellant timely filed its application for a preference right lease for the lands described in the prospecting permit. After an initial review of the lease application, BLM determined that the information submitted with the application was insufficient to determine whether the necessary discovery of a valuable mineral had been made during the per- iod of time the prospecting permit had been in effect. In a letter dated May 3, 1985, BLM requested that appellant provide a map showing the location of utility systems, water sources or other resources on the land, and any proposed development of the land with a narrative statement describing, inter alia, the schedule of development, the method of mining, and the relationship, if any, between the mining operations on the lands applied for
and existing or planned mining operations on adjacent Federal or non-Federal lands. BLM informed appellant that it would be unable to complete processing of the lease application until the requested information was received.

Appellant submitted additional material in response to BLM's May 3, 1985, request for further information. By letter dated July 3, 1985, BLM informed appellant that it had received the additional material. BLM explained, however, that, in preparing a mineral evaluation to determine whether appellant had made a discovery of a valuable mineral deposit, it had noted that the assay submitted by appellant to demonstrate a discovery was

1/ In the preference right lease application, the owners of Lucky II Mines are listed as Sam R. Presnell, Willis Presnell, and Al Presnell.

2/ Issuance of a hard-rock prospecting permit pursuant to the Mineral Leasing Act for Acquired Lands was necessary because the lands embraced by the permit had been donated to the Forest Service in 1934 pursuant to the Clarke-McNary Reforestation Act, Act of June 7, 1924, 43 Stat. 653. As a result, these lands were acquired lands as defined in 30 U.S.C. | 351 (1982), and, therefore, not generally open to mineral entry and location under the mining laws of the United States. See Junior L. Dennis, 61 IBLA 8 (1981).

dated June 18, 1980, 3 years prior to issuance of the permit. Because one of the requirements for issuing a preference right lease is that the min- eral exploration and discovery must take place during the life of the pros- pecting permit, 3/ BLM informed appellant that it would have to submit assays of mineral samples which were taken from the lands subject to the permit during the life of the permit, together with a Geological Survey map identifying where the assay samples had been taken.

In addition to the assay information, BLM requested that appellant submit "[a] copy of the exploration plan approving the prospecting activity on the permit which was required by Stipulation No. 5 of the special permit stipulations." The stipulation cited by BLM required the permittee to sub- mit and have approved by BLM an exploration plan showing, in detail, the proposed prospecting, testing, development, or mining operations to be con- ducted prior to commencing any activities which would disturb the surface or surface resources of the permit area.

In response to BLM's request, on July 31, 1985, appellant submitted an assay report prepared by E. Joe Swisher, General Manager of the Idaho Mining and Development Company. In a cover letter accompanying the report, Swisher stated that the report included the following information:

> (a) A copy of the Rudo-Quandrangle U.S. Geological Survey Map upon which is marked the locations of assay samples taken by the Idaho Mining and Development Company and/or the Limestone Manager of the Nez Perce Tribe, on January 5 and 6, 1985 and May l6, 1985.
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> (b) Sample analysis as completed by fusion, digestion and atomic absorption on February 2 and 3, 1985, and June 9, 1985. Additionally, please find a brief preliminary report upon the limestone deposit in the S. 1/2 of Section 26, Township 36 North, Range 3 East which includes comments directly relating to the economic geology of the carbonate deposit located in the permitted area.

In reference to the exploration plan that BLM had requested from appellant, the cover letter stated: "We are advised that your office has previously been provided the requested copies of the exploration plan and prospecting activity via a 22" x 32" blueprint, various intents, etc."

The record reflects that the next correspondence addressed to appellant from BLM is the December 4, 1985, decision rejecting its lease application. In the decision, BLM states that "[b]ecause neither data furnished during the life of the permit nor evidence submitted after the expiration of the permit [shows] a valuable deposit, the preference right lease application is hereby rejected." The decision, while noting that the assay report prepared

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3/ See 43 CFR 3562.1; Hanna Mining Co., 20 IBLA 149 (1975); E. C. Beede, 7 IBLA 177 (1972).

by Swisher had been received by BLM, does not explain why the report was not considered in the determination of whether there had been a discovery. How-ever, in a letter to appellant's counsel dated the same day as the decision, BLM provided the following explanation:

> On July 31, 1985, this office received from Mr. Joe Swisher a document authorizing him to act for the Presnells and Lucky II Mines and also a report discussing a limestone deposit in the S 1/2 of section 26, Township 36 North, Range 3 East. The lime- stone samples mentioned in the report were reported to have been taken on January 5, 1985, May 16, 1985, and on July 27, 1985, as part of a mineral survey for the Nez Perce Tribe. According to the BLM master title plats, the lands Mr. Swisher described are acquired Forest Service lands and not Tribal lands. Mr. Swisher's report and samples will not be considered as meeting the pros- pecting permit requirements for the following reasons:
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> 1. Samples and reports were conducted for the Nez Perce Tribe and not the Lucky II Mines prospecting permit.
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> 2. The permittee did not submit for review and approval copies of the proposed exploration plan containing the informa-
> tion required by 43 CFR 3572.1 which states assay samples may not be taken without prior approval by BLM of an exploration plan.

Thus, BLM's letter to counsel for appellant clarifies that the report was not considered in the determination of whether a discovery had been made because BLM found it to be unacceptable for the stated reasons. Without this report and its accompanying assays and sample location map, BLM appar- ently concluded that there was nothing further in the record upon which to base a finding that a discovery had been made. Accordingly, BLM concluded in its decision that there was no evidence "showing a valuable deposit."

Appellant takes issue with the reasons for which BLM rejected the assay report it submitted. Appellant has attached affidavits from Swisher and the owners of Lucky II Mines to its statement of reasons averring that Swisher was employed not by the Nez Perce tribe but by appellant at the time the assays were taken. Appellant also contends that, contrary to BLM's conclusion, it complied with the requirement to submit an exploration plan before commencing prospecting activity.

In concluding that Swisher had performed the assays while working for the Nez Perce Tribe and not for appellant, BLM apparently relied on a statement found in the report prepared by Swisher, which stated: "During the time frame of January through May of 1985, this author prepared a special mining and mineral survey for the Nez Perce Tribe regarding limestone and related minerals." Another reference to the tribe is made by Swisher in the cover letter to his report, where he states that assay samples were taken by the "Idaho Mining and Development Company and/or the Limestone Manager of the Nez Perce Tribe." These are the only references made in the report to

the tribe, and no further information is found in the record to explain any relationship between Swisher and the tribe or which supports BLM's conclusion that the report had been prepared for the tribe and not for appellant.

On appeal, appellant has provided an explanation of the statements found in the report and described the relationship between Swisher and the Nez Perce Tribe. In an affidavit attached to appellant's statement of rea- sons for appeal, Swisher states:

> In my Preliminary Report upon the Ford's Creek limestone deposit, please note that it is given by myself in my capacity as General Manager of the Idaho Mining and Development Company (not by, or for, or at the direction of, the Nez Perce Tribe).
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> The mention of type of involvement with the Nez Perce Tribe [in the report] was merely to alert the reader that other reports involving limestone and related minerals existed in the Orofino area and that this author had been involved in preparing a report regarding them.

In its statement of reasons, appellant further explains:

> Mr. Swisher mentions in his report that he had prepared a special mining and mineral report for the Tribe regarding limestone and related materials. This is why he was in the Orofino area on January 5, 1985. However, Mr. Swisher's report for the Tribe covered mineral deposits within reservation boundaries and did not include the Ford's Creek deposit. Mr. Swisher received private compensation for the work he did for Lucky II Mines specifically requested by Lucky II Mines who provided him with samples from the deposit via Sam Presnell and their attorney and requested additional confirmation work. It should be noted that since June of 1985, Mr. Swisher has not even been employed by the Nez Perce Tribe.

In addition to the above statements regarding the assay work and report, Sam and Vicki Presnell, interest holders in Lucky II Mines, have both submitted affidavits stating that Swisher made arrangements with them to take assays "after his normal working hours for the Nez Perce Tribe."

As noted above, other than the two statements in the report referring to the tribe, nothing in the record suggests that the work was performed for the tribe. The information provided by appellant supports the conclusion that these statements were included to differentiate the report submitted by appellant from others performed in the same area by the same person. Thus, in light of the explanations provided on appeal by appellants, which are unrebutted by BLM, it appears that BLM erred in concluding that the assay report submitted by appellant in support of its preference right lease had been prepared for the Nez Perce Tribe or related to Indian lands. Accordingly, it was error for BLM to reject the report on this basis.

BLM also rejected the report, however, on the ground that an exploration plan was not submitted to BLM prior to the commencement of prospecting activities. Before directly addressing this issue, it is necessary to delineate those conditions which appellant, as a permittee, agreed to meet before performing prospecting operations once BLM had issued a prospecting permit.

During the life of appellant's permit, prospecting permits were issued pursuant to Departmental regulations at 43 CFR Part 3510 (1985). 4/ Issu- ance of a permit granted to "the permittee the exclusive right to prospect on and explore the lands involved to determine the existence of, or workability of, and commercial value of the mineral deposits therein." 43 CFR 3510.1-2 (1985). However, this right to prospect is subject to additional conditions and responsibilities imposed by other regulations and which are set out in the permit itself. Leroy Pedersen, 56 IBLA 86 (1981).

First, the standard permit form submitted by appellant required that a permittee comply with the Minerals Management Service operating regulations found at 30 CFR Part 231 (1982). Shortly after issuance of appellant's permit, the Secretary of the Interior transferred certain regulatory functions involving mineral leases to BLM, and appropriate sections of 30 CFR Part 231 were ultimately redesignated as 43 CFR Part 3590. 5/ Thus, 43 CFR 3592.1(a) requires the permittee to submit

> to the authorized officer for approval an exploration * * * plan which shall show in detail the proposed exploration, prospecting, [or] testing * * * to be conducted. Exploration * * * plans shall be consistent with and responsive to the requirements of the * * * permit for the protection of nonmineral resources and for the rec-lamation of the surface of the lands affected by the operations.
> * * * No operations shall be conducted except under an approved plan.

In addition to the requirement in the standard form that permittees comply with the Department's operation regulations, the "Hardrock Prospecting Permit Stipulations" attached by BLM to appellant's permit outlined specific procedures to be followed before conducting exploration activities. Stipulations 4 and 5 both required that, prior to exploration activity, the

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4/ In 1986, the regulations governing the issuance of leases and prospecting permits for solid minerals other than coal and oil shale were revised and redesignated. 51 FR 15204 (Apr. 22, 1986). Hard rock prospecting permits are presently issued pursuant to 43 CFR Subpart 3562. Id. at 15249.

5/ These regulations were initially redesignated as 43 CFR Part 3570. See 48 FR 36588 (Aug. 12, 1983). No substantive changes were made in the redesignation. In 1986, 43 CFR Part 3570 was redesignated as 43 CFR Part 3590. See 51 FR 15212 (Apr. 22, 1986). Inasmuch as no substantive changes were made in either redesignation, references in the text will be to the currently codified regulations.

permittee must notify the authorized officer in writing. 6/ Stipulation 4 sets forth the requirements for conducting exploration activities which do not result in surface disturbance. For activities that do disturb the sur- face or surface resources, Stipulation 5 requires the permittee to submit for review and approval by the authorized officer the information required by 43 CFR 3592.1(b) (formerly 30 CFR 231.10(b) (1982)), the regulation that sets forth the specific information that an exploration plan must contain.

Finally, because the surface of the lands described in the permit is under the management of the Forest Service, section 2(c) of appellant's permit specified that the permittee "shall not prospect land under the administrative jurisdiction of the Forest Service without prior notice to and consent of that Service to a plan for prospecting." This section of the permit is supplemented with stipulations attached to the permit which outlined the procedures appellant was to follow in notifying the Forest Service that it was planning to conduct operations under the permit.

In its decision to deny appellant's lease application, BLM found specifically that because appellant had failed to produce an exploration plan approved by BLM prior to the taking of the assay samples described in the Swisher report, it had failed to comply with the procedures in 43 CFR 3572.1 [now 43 CFR 3592.1] and Stipulation 5 of the permit, both of which required appellant to obtain BLM approval before commencing any prospecting or exploration activities. See December 4, 1985, BLM letter to E. Scott Lee. This failure to comply with the regulations was then cited by BLM as grounds for rejecting the report.

Appellant asserts that it did comply with the exploration plan requirements. We note initially that when BLM requested a copy of an approved exploration plan, appellant responded through Swisher that BLM had "previously been provided the requested copies of the exploration plan and prospecting activity via a 22" x 32" blueprint, various intents, etc." On appeal, appellant again refers to the exploration plan found on a 22- by 32-inch blueprint, contending that this plan is in compliance with the permit requirements. Appellant states that in a meeting it held with BLM 2 days after issuance of the decision rejecting the lease application, Swisher brought the blueprint in the case file to the attention of the BLM employee at the meeting. Appellant reports that the employee responded that he had never before seen the blueprint. While appellant does not explicitly so state, it apparently is contending that had BLM considered the blueprint before reaching its decision, it would have had no basis on which to conclude that an exploration plan had not been submitted.

6/ The stipulation as written followed 43 CFR 231.10 (1982), which required notification of the "District Mining Supervisor" of the Minerals Management Service. When the regulatory authority was transferred to BLM in 1983, see note 4, supra, the regulation was changed to require notification of the proper BLM official ("authorized officer").

A review of the document referred to by appellant, however, shows that it is a blueprint of an exploration plan submitted by appellant not in anticipation of development activity under the permit, but rather as part of the preference right lease application. Nowhere on the blueprint is there a discussion of any of the exploration activities described in the Swisher report. In fact, in the explanation box found in the lower righthand corner of the blueprint, the preparer wrote in the space for inscribing the lease permit number that the blueprint was "filed for lease." Notes and graphs on the blueprint describe proposed mining and reclamation activity under a lease operation, including the transport of mineral material to a crushing site and the changes in topography that would be associated with the mining of lands under the exploration permit. Thus, it is apparent that the blueprint could not have served as a basis for concluding that appellant had complied with the requirement that it notify and obtain BLM's approval prior to commencing prospecting operations.

Appellant next argues that it is in compliance with the exploration plan requirements because it has complied with the provisions for reporting all exploration activity to the Forest Service. Appellant has submitted a copy of a letter from the Forest Service District Ranger to Al Presnell, a co-owner of Lucky II Mines. This letter, dated May 16, 1985, states in pertinent part:

> Another field season is rapidly approaching and I imagine that you are thinking about your mining plans for this year.
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> * * * * * * *
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> Normally we will require an operating plan if heavy equipment (backhoes, bulldozers, etc.) is to be used. Also, we may require a bond in some cases if the situation warrants. If you plan to do the same thing as last year, your operating plan for last year may suffice in some cases.

Appellant has also supplied a "Notice of Intent for Mining on the Clearwater National Forest" that it apparently submitted to the Forest Ser- vice with a stated operating period from August 1, 1983, through August 1, 1984. 7/ In the notice of intent, appellant's proposed operations were described as "prospecting geochemical analysis" to be performed in a manner that would "not disturb trees or top soils."

[1] As noted above, the provisions of the prospecting permit required, before commencement of prospecting activity, notice to and approval from the Forest Service. See 30 U.S.C. | 352 (1982). However, this requirement is completely separate from and in addition to the permit stipulations requir- ing approval by BLM of exploration plans. While the documents submitted by appellant on appeal indicate compliance with certain Forest Service

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7/ There is no indication in the record or on the notice of intent itself that the Forest Service received or approved the notice.

requirements, there is no indication in the record that these or other documents were ever submitted to BLM.

Appellant asserts that it was told by a BLM employee that it should "take everything through the U.S. Forest Service who managed the surface resources" (Appellant's SOR at 4). In an affidavit attached to the statement of reasons, Sam Presnell states that the BLM employee informed him that appellant "should file [notices of intent] and plans with the U.S. Forest Service and send him a copy which he would forward to [BLM's] other people."

In considering this argument, we note initially that appellant has made no allegation that it was told by BLM or other Governmental officials that it was not required to follow the stipulations and regulations mandating review by BLM of any exploration plan. Given that the Forest Service has concurrent management responsibilities in this situation, it would not have been unreasonable for BLM personnel to recommend that appellant consult with the Forest Service at all steps in the prospecting process. In any event, reliance upon erroneous or incomplete information provided by Federal employees does not create any rights not authorized by law. Wayne Cook, 58 IBLA 350 (1981). In Robert W. Myers, 63 IBLA 100 (1982), the Board noted that the authority of the Department to enforce its oil and gas leasing regulations was not vitiated or lost through lack of enforcement by some of its officers, nor by an applicant's reliance on alleged misinformation by Departmental employees. The same principle applies to cases arising under regulations governing the exploration and leasing of solid minerals. See Rachalk Production, Inc., 71 IBLA 374 (1983). This is particularly the case where, as here, the regulations specifically advert to the necessity that a permittee obtain BLM approval before commencing prospecting activities. Appellant's assertion that it was misled as to these requirements must be rejected. 8/

Having determined that BLM correctly concluded that appellant failed to comply with 43 CFR 3592.1 and the provisions of the lease, we must

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8/ Appellant also contends that it was told that "where no surface disturbance occurred (geological mapping, survey, and samplings as well as ore body estimates), we did not need to submit an Exploration Plan for approval" (Affidavit of Sam Presnell at 2). To the extent appellant's contention in this regard raises the same issue of reliance upon erroneous or incomplete information previously addressed, it is rejected for the reasons set forth in this decision. Further, we note that while Stipulation 4 addresses exploration resulting in no surface disturbance and does not require, as does Stipulation 5, submission of the information required in 43 CFR 3592.1(b) (1985) (formerly 30 CFR 231.10(b) (1982)), it does clearly require, before conducting any exploration activities, notification of the authorized officer in writing for a determination of whether an exploration plan would be needed. In the case presently on appeal, appellant has failed to show any compliance with the notification requirements in the BLM stipulations.

consider a further issue raised by BLM's decision. As noted above, once BLM determined that no exploration plan had been submitted and approved prior to the taking of mineral samples from the lands under permit, it concluded that the Swisher report could not be considered in the determination of whether a valuable deposit had been discovered within the time limits prescribed by the permit. Having rejected the report, there was nothing further in the record upon which BLM could base a finding that a discovery had been made, and rejection of the lease application necessarily followed. What we must decide is whether it was proper, under these circumstances, for BLM to reject the evidence submitted to support a discovery.

The regulation at 43 CFR 3521.1-1 (1985) [now 43 CFR 3563.1-2] outlined the requirements for submitting a preference right lease application. The applicable regulation, 43 CFR 3521.1-1(d) (1985) [now 43 CFR 3563.2-1], stated that the authorized BLM officer shall "determine if the permittee has discovered a valuable deposit." This determination is to be based on "data furnished to the authorized officer by the permittee as required by 43 CFR Part 3570 [now Part 3590] during the life of the permit and supplemental data submitted at the request of the authorized officer, to determine the extent and character of the deposit, the anticipated mining and processing methods, the anticipated location, kind and extent of necessary surface disturbance and measures to be taken to reclaim that disturbance." Another regulation, 43 CFR 3521.1-1(f) (1985) [now 43 CFR 3563.4(a)], instructed the authorized officer to reject the application and inform the permittee of the basis for the rejection "if it is determined that the permittee did not discover a valuable deposit, * * * or if the applicant fails to timely submit any requested information."

Whether it is proper to reject a preference right lease application which is premised on data developed from prospecting activities which the permittee failed to submit to BLM and obtain its prior approval is a question which has not previously been addressed by the Board. 9/ It is true that once the Department issues a prospecting permit, it has necessarily obligated itself to allow the permittee a sufficient opportunity to prospect the area embraced within the permit. See John A. Nejedly, 80 IBLA 14,

9/ In GeoResources, Inc., 67 IBLA 297 (1982), the Board considered an appeal from a BLM decision rejecting an application for a prospecting permit on the grounds that no exploration plan had been filed within the time limit imposed by BLM. The Board reversed, holding that because there was no regulatory requirement that issuance of a permit was contingent upon the filing of an exploration plan, BLM's rejection of the application was improper. The Board stated: "We conclude that it was improper for BLM to reject the application because appellant failed to file information that is only required by regulation to be filed after a permit is issued." Id. at 299 (emphasis in original). Thus, the Board differentiated between the requirements to be followed before and those to be followed after issuance of the prospecting permit.

26 (1984) (concurring opinion). However, as explained above, the exercise of these rights is subject to the stipulations and regulations previously outlined. Thus, while the permittee has a present right to prospect the lands in the lease, as well as an inchoate right to a preference right lease should valuable minerals be disclosed, these rights are conditioned upon the observance of other requirements. See generally Leroy Pedersen, supra.

After reviewing the language and purpose of 43 CFR 3592, we conclude that it is proper for BLM to reject an application for a preference right lease where the prospecting permittee has failed to comply with the requirements for exploration plan approval. Specifically, 43 CFR 3592.1(a) states that before conducting any operations under permit, the operator is required to submit for approval an exploration plan. This plan must show in detail the proposed exploration and must be consistent with and responsive to the requirements of the permit for the protection of nonmineral resources and for the reclamation of the surface of the lands affected by the operations. If needed, the authorized officer will indicate to the operator what modifications of the plan are necessary to conform to the provisions of the applicable regulations and the terms and conditions of the permit or lease. Finally, the regulation expressly states that no operations can be conducted except under an approved plan.

The purpose animating the regulations which govern exploration for solid minerals is set forth in 43 CFR 3590.0-1. That regulation states in pertinent part:

> The purpose of the regulations in this part is to promote orderly and efficient prospecting exploration, testing development, mining and processing operations and production practices without waste or avoidable loss of minerals or damage to deposits; to promote the safety, health, and welfare of workmen; to encourage maximum recovery and use of all known mineral resources; to promote operating practices which will avoid, minimize, or correct damage to the environment -- land, water and air -- and avoid, minimize, or correct hazards to public health and safety; and to obtain a proper record and accounting of all minerals produced.

Further expressions of the purpose of these regulations are found in 43 CFR 3590.0-2, which enumerates the duties of the authorized officer in implementing and enforcing the regulations. This section empowers the authorized officer to, among other things, supervise operation to prevent waste or damage, require operators to conduct operations in compliance with the provisions of applicable regulations, and issue orders and instructions as necessary to assure compliance with the purposes of the regulation in 43 CFR Part 3590. Finally, the regulation at 43 CFR 3591.1(a) declares the general obligations of prospecting permittees:

> Operations for the discovery, testing, development, mining, or processing of minerals shall conform to the provisions of applicable regulations, the terms and conditions of the lease or permit, the requirements of approved exploration or mining plans and the orders and instructions issued by the authorized officer

> or his subordinates under the regulations in this part. Lessees and permittees shall take precautions to prevent waste and damage to mineral-bearing formations.

[2] The above regulations have been set forth at length in order to establish the clear intent demonstrated therein that a permittee's plan for prospecting activities be submitted and approved before any activity takes place under the permit. 10/ BLM approval of such a plan is the essential mechanism by which BLM seeks to effectuate the goals of the regulatory scheme. By requiring the submission of a plan for prospecting and exploration, the Department can ensure that all of the purposes set forth in 43 CFR 3590.0-1 and the responsibilities of the authorized officer set forth in 43 CFR 3590.0-2 are met. An operator who fails to submit a plan for approval leaves open the possibility that unauthorized exploration activity will cause waste and damage to mineral-bearing formations and otherwise adversely affect the environment.

Given the clear intent stated above, we find that it was reasonable for BLM to reject appellant's preference right lease application on the grounds that the assay samples utilized therein had been taken without the prior approval of BLM. Since these samples constituted the only evidence that a valuable deposit existed within the limits of the permit area, it must follow that BLM was correct in rejecting the lease application. To hold otherwise would vitiate the clear intent of the regulations governing prospecting permits and would exempt a lessee from performing the clearly stated duties imposed by the regulations. These regulations were duly promulgated pursuant to statutory authority. This being the case, they have the full force and effect of law and are binding on the Department. 30 U.S.C. | 359; cf., Exxon Co., USA, 45 IBLA 313 (1980). Accordingly, the Board has no authority to treat as insignificant, declare invalid, or waive such duly promulgated regulations. Kuugpik Corp., 85 IBLA 366, 370 (1985).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

James L. Burski
Administrative Judge

I concur:

John H. Kelly
Administrative Judge

10/ The 1986 changes to the regulations governing exploration and leasing of solid minerals, as described in note 4, supra, did not modify this intent. The principle purpose of those changes was to "streamline and sim- plify the procedures contained in the existing regulations." 51 FR 15212 (Apr. 22, 1986).

Concurring opinion by AJ Arness, 102 IBLA 67 through 69, missing.